Appendix 1

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA v. WARE

No.93295

____P.3d____

2000 OK 60

Decided: July 18, 2000

Mandate Issued: September 25, 2000

Supreme Court of the State of Oklahoma

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA, an agency of the State of Oklahoma; ART UNAP, JR., Chairman, DOROTHY PALMER, Vice-Chairman, SANDRA QUOETONE, Secretary-Treasurer, as Officers of the Board of Commissioners of the Housing Authority of the Kiowa Tribe of Oklahoma,
Plaintiffs/Appellees,

V.

RANDALL WARE, RICHARD KAUAHQUO, CAROL FRAME, WILLIAM TARTSAH, and WENDELL AUTAUBO,
Defendants/Appellants.

APPEAL FROM THE DISTRICT COURT OF CADDO COUNTY, OKLAHOMA
HONORABLE RICHARD G. VAN DYCK

The plaintiffs/appellees are commissioners of the Kiowa Housing Authority who were elected by vote of the Kiowa Indian Council and whose terms have expired by passage of time. The defendants/appellants claimed to be commissioners of the Kiowa Housing Authority lawfully appointed by the

chairman of the Kiowa Business Committee. Title 63 O.S. 1991 § 1057 provides that the chief or other governing head of an Indian tribe has authority to appoint commissioners to the Indian Housing Authority. The trial court determined that the Kiowa Indian Council is the governing body of the tribe and that tribal election is the proper procedure to select commissioners to the Kiowa Housing Authority. The defendants/appellants appealed and their motion to retain the appeal was granted.

AFFIRMED.

Nathan H. Young, III, Tahlequah, Oklahoma, for Appellees.
L. Elizabeth Brown, R. Brown Wallace, ANDREWS DAVIS LEGG BIXLER MILSTEN & PRICE, Oklahoma City, Oklahoma, for Appellants.

HARGRAVE, V.C.J.

1 This case involves a dispute between two groups of individuals in the Kiowa Tribe, each claiming to be the rightful commissioners to the Kiowa Housing Authority. The plaintiffs were elected by a vote of the tribe, as has been the procedure since adoption of the Kiowa Constitution, and have refused to vacate their offices until new commissioners are properly elected. The defendants were appointed by the chairman of the Kiowa Business Committee.

2 The plaintiffs/appellees sought declaratory relief in district court, asking for a determination that they are the lawful commissioners of the Kiowa Housing Authority and that only the Kiowa Indian Council can appoint commissioners to the Kiowa Housing Authority, by holding an election. The defendants counterclaimed, asking for a determination by the

court that the chairman of the Kiowa Business Committee is the proper appointing authority. In the alternative, appellants argue that state courts lack jurisdiction because of tribal sovereign immunity.

3 The trial judge ruled in favor of the plaintiffs, finding that jurisdiction existed by reason of *Housing Authority of the Choctaw Nation v. Craytor*, 1979 OK 100, 600 P.2d 314, and holding 1) that the governing body of the Kiowa Tribe is the Kiowa Indian Council, and 2) that commissioners to the Kiowa Housing Authority should be elected. The defendants/appellants appealed and filed a motion to retain the appeal in this Court. The motion to retain was granted. We find that the trial court correctly determined that it had jurisdiction and correctly ruled that the Kiowa Indian Council is the governing body of the Kiowa tribe and that election is the proper procedure.

4 The appellant has briefed two issues on appeal: whether the chairman of the Kiowa Business Committee is the proper appointing authority, and whether the district court has jurisdiction. The appellees have not filed a brief on appeal, but ask us to determine the case based on the trial court's findings of fact and conclusions of law. [1]**Appellants argue, and appellees agree, that this case is of a public nature, so that the Court should search the record and decide the case as it sees fit based upon the law and the facts.**

I. JURISDICTION

5 Although the defendants/appellants argue that sovereign immunity bars the action because Oklahoma courts have no jurisdiction over a dispute involving the internal political affairs of a tribal housing authority and its related federally

recognized Indian Tribe, citing *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 118 S. Ct. 1700, 140 L.Ed.2d 981 (1998), the appellants do not object to this Court's deciding the state law question, and in fact ask us to do so. In the introduction to their brief on appeal, the appellants recognize that the question to be answered involves interpretation of state law, but they object to the trial court's apparently *ordering* the Kiowa Tribe to hold an election. Appellants urge this court to stay withing the bounds of analyzing tribal political structure solely as a tool for interpreting an Oklahoma statute. Because we find that the trial judge did not order the Kiowa Tribe to conduct an election, but merely determined that an election was the proper procedure to be followed, we find that the trial court did not exceed its jurisdiction.

6 The question of state court jurisdiction to interpret the Indian Housing Authority statute has previously been decided by this Court. In *Housing Authority of the Choctaw Nation v. Craytor*, 1979 OK 100, 600 P.2d 314, the threshold question was whether the court had jurisdiction over the matter as a question of state law rather than an intra-tribal matter. We held that state courts have jurisdiction under 63 O.S. § 1057 to determine who is authorized to appoint Commissioners to Indian housing authorities. *Craytor* was a dispute between two groups of individual tribal members, each of whom claimed to be the lawfully-appointed commissioners of the Choctaw Nation Housing Authority. We held that it was not an intra-tribal matter, but rather was a question of interpretation of the statute to determine whether the executive director of the Choctaw Nation was empowered to appoint commissioners. The appellants recognize that section1057 makes the Indian housing authority an agency of the State of Oklahoma. In *Craytor*, we held that because the

Indian Housing Authority was an agency of the State of Oklahoma, and because the power to appoint commissioners to the housing authority was derived from the statute, rather than from the Choctaw Nation, it was a matter for the district court.

7 Lastly, in the case at bar the tribe has not been sued; the defendants are individual members of the tribe who claim to have been properly appointed by the chairman of the Kiowa Business Committee. Sovereign immunity does not extend to individual members of the tribe. *United States v. James, 980 F.2d 1314, 1319 (9th Cir. 1992), cert. den. James* v. *U.S., 510 U.S. 838 (1993), citing Puyallup Tribe, Inc. v. Washington Game Dep't 433 U.S. 165, 173, 97 S.Ct. 2616, 2621, 53 L.Ed.2d 667(1977).*

II. THE KIOWA CONSTITUTION DEFINES THE KIOWA INDIAN COUNCIL AS THE TRIBE'S GOVERNING BODY

8 The Oklahoma Housing Authority Act, 63 O.S. 1991 § 1051, et. seq., creates a housing authority in every city in the state. No business may be transacted until the governing body of each city has passed a resolution declaring the need for a housing authority. Section 1057 of the Oklahoma Housing Authority Act creates the Indian Housing Authority, which likewise cannot transact any business until the governing council of the tribe, band or nation has passed a resolution declaring the need for a housing authority. Section 1057 provides that the housing authority of an Indian tribe, band or nation shall be an agency of the State of Oklahoma, possessing all powers, rights and functions specified in the Act for city and county authorities.

9 Title 63 O.S. 1991 § 1057 provides that the chief or other governing head of an Indian tribe, band or nation is authorized to exercise the same appointing powers with respect to an Indian housing authority that are vested in the mayor of a city for appointments to a city housing authority. The mayor of a city may appoint commissioners to the housing authority, with the advice and consent of the city's governing body. 63 O.S. §1058. The parties agree that the Kiowa Tribe does not have a chief, nor an individual specifically designated as the governing head of the tribe. The Kiowa Constitution defines the Kiowa Indian Council, which consists of all adults over eighteen (18) years of age, as the governing body of the tribe.

10 The record reflects that after adoption of the Kiowa Constitution, commissioners to the Kiowa Housing Authority have been chosen by election. The plaintiffs/appellees are commissioners of the Kiowa Housing Authority who were elected by vote of the Kiowa Indian Council, and whose terms have expired by passage of time. The defendants/appellants are commissioners of the Kiowa Housing Authority appointed by the chairman of the Kiowa Business Committee. The plaintiffs/appellees refuse to vacate their positions until they have been replaced by duly elected commissioners, relying on 63 O.S. § 1058, which provides that each commissioner shall hold office until his or her successor has been appointed and qualified.

11 Appellants argue that the statutory phrase "chief or other governing head" is ambiguous when applied to Kiowa Tribe, and that the intent of the legislature was for an *individual* to appoint commissioners. As to the Kiowa Tribe, they argue that the language must mean a tribal official holding an office comparable to that of mayor, and that the chairman of the

Kiowa Business Committee is the person in the tribe most closely akin to the mayor of a city. This argument without merit. The statute does not *require* that an appointment be made by an individual; the statute gives authority to appoint to the chief or other governing head. If there is no chief or other governing head designated by the Tribe, then commissioners to their housing authority must be appointed by their designated governing body.

12 The constitution of the Kiowa Indian Tribe of Oklahoma defines the Kiowa Indian Council as the governing body of the tribe. The Kiowa Indian Council is composed of all members of the tribe at least 18 years of age or over. Matters outlined in article V, section 1 of the Kiowa Constitution are to be presented and discussed at meetings of the Kiowa Indian Council, pursuant to article XVI of the Kiowa Constitution. Decisions on the issues discussed, however, shall be made only by a subsequent election which shall be open to all qualified voters of the tribe, as provided in article XVII of the Kiowa Constitution.

13 Section 1 of article V vests the Kiowa Indian Council with authority to act on matters such as approval of an annual budget, claims, sale of tribal land, long term industrial, commercial or development leases, contracts with federal, state or local governments or private firms, legal counsel contracts, selection of tribal employees. *All other powers not vested in the business committee by section 2 are retained by the Kiowa Indian Council.* The section provides that any of powers of the Kiowa Indian Council may be delegated to the business committee. There is no delegation with respect to the Kiowa Housing Authority.

14 The Kiowa Business Committee is an eight (8) member representative body empowered to act only on those matters outlined in article V, section 2 of the Kiowa Constitution. The Kiowa Business Committee is empowered by article V, section 2 of the Kiowa Constitution to take necessary action on the following: a) revocable permits, farm and grazing leases; oil, gas and mineral leases; easements and rights-of-way; b) appoint subordinate committees; c) promote arts and crafts and Kiowa Indian Culture; d) prepare annual budgets for submission to and approval of the Kiowa Indian Council; e) Accept applications for tribal employment and submission to the Kiowa Indian Council for selection; f) determine term of employment and salary of tribal employees; g) promulgate and enforce ordinances and codes governing law and order to protect the peace, health, safety and general welfare, on land determined to be within tribal jurisdiction subject to the approval of the Assistant Secretary for Indian Affairs or his authorized representative; h) develop, negotiate and approve economic, industrial and commercial enterprises and leases on land owned solely by the Kiowa Tribe as long as the lease term does not exceed 50 years; i) the Kiowa Business Committee shall be authorized to promulgate and enforce codes and ordinances to levy and collect taxes within the area of the tribe's jurisdiction, . . etc.

15 Section 5 of the Kiowa Constitution also contains a Reserve Power Clause, which provides that any right and power vested in the Kiowa Indian Tribe not expressly referred to in the constitution may be exercised by the members of the Kiowa Indian Council through the adoption of appropriate amendments to the constitution and bylaws. Further, all powers not *expressly vested* in the Kiowa Business Committee are reserved to the Kiowa Indian Council.

16 The above-quoted portions of the Kiowa Constitution reflect that the Kiowa Business Committee, and its Chairman, have limited authority to Act. No mention is made in the Kiowa Constitution of the Kiowa Housing Authority. The Kiowa Constitution contains no provision delegating authority to the Kiowa Business Committee, or to its chairman, to appoint commissioners to the Kiowa Housing Authority.

17 All powers not given specifically to the Kiowa Business Committee or its Chairman are reserved to the Kiowa Indian Council. The Kiowa Tribe has designated its governing body in its Constitution and has provided for elections to determine important, non-delegated matters. The statute is not offended if the appointing authority is not an individual.

18 The trial court correctly ruled that under the provisions of pertinent state law, the Kiowa Indian Council was the governing body with power to appoint commissioners to the Kiowa Housing Authority and ruled that an election is the proper procedure for selecting those commissioners. The trial judge did not *order* the Kiowa Tribe to conduct an election, nor could he have done so. It is, in effect, of no concern to the state courts whether an election is in fact held. The trial court merely interpreted a state statute to mean that the Kiowa Indian Council is the governing body of the tribe and declared that the proper procedure for choosing commissioners to the Kiowa Housing Authority is by election.

AFFIRMED.

19 **ALL JUSTICES CONCUR**

Appendix 10

FOOTNOTES

[1]The appellants have filed a motion for this Court to search the record and decide the case without a brief from the appellees because the question is of a public nature, citing *Application of Goodwin, 597 P.2d 762 (Okla. 1979).* The appellees filed a response concurring in the motion, stating that all of the law and facts cited in the district court's findings of fact and conclusions of law are sufficient for the Court to rely on.

Appendix 11

STATE OF OKLAHOMA
CADDO CO.
FILED JUNE 4, 1999

IN THE DISTRICT COURT IN AND FOR CADDO COUNTY
STATE OF OKLAHOMA

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA, an agency of the State of Oklahoma, et al

Petitioners,

v. Case No. CJ-98-118

RANDALL WARE, et al

Respondents,

ORDER

The above styled matter came on for trial on the 10th day of March, 1999, petitioners appearing by counsel, Nathan H. Young, III and Tim Gifford, and the defendants appearing by counsel, L. Elizabeth Brown and R. Brown Wallace. After hearing some testimony and argument on the above date, the parties submitted proposed findings of fact and conclusions of law. After reviewing the evidence, relevant case and statutory law and the proposed findings of fact and conclusions of law submitted by the parties, the Court makes the following findings:

1. This court has jurisdiction over the Kiowa Housing Authority by its creation pursuant to 63 O.S. §1057 and the

holding in *Housing Authority of the Choctaw Nation v. Craytor*, 600 P.2d 314 (Okla. 1979).

2. The Kiowa Housing Authority was authorized by Resolution 69-1 adopted February 8, 1969, by action of the Kiowa Tribal Council, to serve as its housing authority. In said resolution, all powers concerning a housing authority were delegated to the Kiowa Interim Business Committee.

3. At the time of the creation of the housing authority the Kiowa Tribe did not have a constitution, or at least, the constitution now governing the tribe was not in effect.

4. The Constitution and Bylaws of the Kiowa Tribe were ratified by a majority of its members on May 23, 1970.

5. A reading of 63 O.S. §1057 finds that commissioners of the housing authority are to be appointed by the governing head of the entity creating the authority.

6. Article I, Section 2 of the Constitution and Bylaws of the Kiowa Tribe of Oklahoma (Constitution) clearly states that the governing body of the tribe is the Kiowa Indian Council (KIC).

7. Nowhere in the Constitution does it empower the Kiowa Business Committee (KBC) to appoint commissioners to the housing authority. Article V, Section 2 sets out the powers of the KBC. Those powers do not include appointing commissioners to the housing authority.

8. Nowhere in the Constitution does it continue the Kiowa Interim Business Committee. In fact, an election of the KIC was held on the 3rd day of June, 1973, where a question was posed to the members whether to ratify the actions of the Kiowa Housing Authority prior to the adoption of the Constitution. This proposition was approved by a majority of the KIC voting. Another question on the same ballot was whether to allow the KBC to appoint commissioners to the Kiowa Housing Authority when a vacancy occurs for whatever reason other than the expiration of a term. This measure was not approved by the KIC. Following this reasoning, the Court finds that at this point in time all vacancies to the Kiowa Housing Authority, whether during or at the expiration of a term, were to be filled by a vote of the KIC.

9. When the Constitution was ratified the Kiowa Interim Business Committee ceased to exist and the terms of the Constitution governed the tribe and its operations.

10. When faced with a similar argument, Caddo County Associate District Judge David Powell in case number C-89-29 found that the appointment of Housing Authority Commissioners was by a vote of the KIC.

11. The Kiowa Election Board states that it has *always* placed the housing commissioner positions on the annual June tribal election ballot. However, it appears that since the June, 1996 election, the housing commissioner positions have not been placed on the ballot because the housing authority failed to pay for its share of the election costs.

Therefore, this court finds and orders that Commissioners of the Kiowa Housing Authority are to be elected to their positions by a vote of the KIC. The KBC has no authority to appoint commissioners to the Kiowa Housing Authority. Even when a commissioner's term has expired, the office will carry over until a successor has been appointed and qualified. 63 O.S. §1058. The Kiowa Indian Council must hold an election to appoint commissioners to the housing authority.

IT IS SO ORDERED!

Dated this 4th day of June, 1999.

/S/_____
Richard G. Van Dyck
District Judge

Court Clerk Please send copies to:

All Counsel of record

Appendix 15

24 CFR § 905.108 (Repealed)

An IHA may be established either:

* * *

(b) Pursuant to a state law which provides for establishment of IHAs with all necessary legal powers to carry out low income housing projects for Indians.

§ 1057. Creation of Indian housing authorities.

There is hereby created, with respect to each Indian tribe, band, or nation in the state, a public body corporate and politic, to function in the operating area of such Indian tribe, band, or nation to be known as the "housing authority" of said Indian tribe, band, or nation, which shall be an agency of the State of Oklahoma, possessing all powers, rights, and functions herein specified for city and county authorities created pursuant to this act:[1] Provided that said Indian housing authority shall not transact any business nor exercise its powers hereunder until or unless the governing counsel of said tribe, band, or nation, as the case may be, by property resolution, declares that there is a need for an authority to function for said tribe, band, or nation.

Except as otherwise provided in this act, all the provisions of law applicable to housing authorities created for cities and counties and the commissioners of such authorities shall be applicable to Indian housing authorities and the commissioners thereof, unless a different meaning clearly appears from the context. The Chief or other governing head of an Indian tribe, band, or nation is hereby authorized to exercise all appointing and other powers with respect to an Indian housing authority that are vested by this act in the mayor of a city relating to a city housing authority.

[1] Title 63 § 1051 et seq.

Appendix 17

STATE OF OKLAHOMA
CADDO CO.
FILED JUNE 4, 1999

IN THE DISTRICT COURT WITHIN AND
FOR CADDO COUNTY
STATE OF OKLAHOMA

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA, an agency of the State of Oklahoma, ART UNAP, JR., Chairman, DOROTHY PALMER, Vice-Chairman, SANDRA QUOETONE, Secretary-Treasurer, as Officers and the Board of Commissioners of the Housing Authority of the Kiowa Tribe of Oklahoma,

Petitioners,

vs. Case No. CJ-98-118

RANDALL WARE, RICHARD KAUAHQUO, CAROL FRAME, WILLIAM TARTSAH, and WENDELL AUTAUBO,

Defendants.

ANSWER AND COUNTERCLAIM OF DEFENDANTS RANDALL WARE, RICHARD KAUAHQUO, CAROL FRAME, WILLIAM TARTSAH AND WENDALL AUTAUBO

Defendants, Randall Ware, Richard Kauahquo, Carol Frame, William Tartsah and Wendell Autaubo, answer plaintiffs' petition for declaratory relief and temporary and

permanent injunction as set forth below. The numbered paragraphs correspond to those in the petition. Plaintiffs' allegations are denied unless expressly admitted.

1. Defendants admit that Oklahoma law purports to make the Kiowa Housing Authority ("KHA") a State agency but the creation, operation and control of the KHA also involves tribal and federal law.

2. Denied. Each plaintiff's term has long since expired. Ms. Palmer and Ms. Quoetone's one-year terms began in 1995 and expired in 1996. Mr. Unap's three-year term began in 1985 and expired in 1988.

3. Denied. Defendants are the lawful commissioners of the KHA. They were properly appointed to fill the three expired terms and the two vacancies.

* * *

COUNTERCLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF

For their counterclaim against plaintiffs, defendants state as follows:

1. Defendants are the lawfully appointed KHA commissioners. They were appointed by the Chairman. Both state and tribal law give the Chairman the power to appoint commissioners. Under state law, §1057 of Title 63 grants the Chairman, as the Tribe's governing head, the

authority to appoint the commissioners. Under tribal law, the Kiowa Constitution states that the Chairman is the presiding officer at meetings of the Kiowa Business Committee and at meetings of the Kiowa electorate. (See Kiowa Constitution, Art. XII, § 1, attached as Exhibit A.) By resolution, the Kiowa electorate specifically granted to the power to appoint KHA commissioners. (See Resolution, attached as Ex. B.)

2. As KHA commissioners, defendants requested that plaintiffs turn over to them the Anadarko business office and all records and assets of the KHA.

3. Plaintiffs refused to turn over the office, records and assets of the KHA to defendants.

4. Plaintiffs are not authorized to continue to act as KHA commissioners. Their terms expired years ago and they have not been reinstated by appointment, election or any other means.

5. Plaintiffs' conduct in continuing to act as the authorized KHA commissioners injured defendants because plaintiffs' conduct significantly interferes with the Kiowa Tribe's right to self-government and its ability to operate a housing program under tribal, federal and state law.

* * *

Appendix 20

STATE OF OKLAHOMA
CADDO CO.
FILED MARCH 3, 1999

IN THE DISTRICT COURT
SIXTH JUDICIAL DISTRICT
CADDO COUNTY
STATE OF OKLAHOMA

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA, an agency of the State of Oklahoma, ART UNAP, JR., Chairman, DOROTHY PALMER, Vice-Chairman, SANDRA QUOETONE, Secretary-Treasurer, as Officers and the Board of Commissioners of the Housing Authority of the Kiowa Tribe of Oklahoma,

Petitioners,

vs. Case No. CJ-98-118

RANDALL WARE, RICHARD KAUAHQUO, CAROL FRAME, WILLIAM TARTSAH, and WENDELL AUTAUBO,

Defendants.

PRETRIAL CONFERENCE ORDER

* * *

4. Defenses:

Grounds for Defense	Applicable Statute, Ordinance, Common Law Rule
a. Plaintiffs' terms as commissioners of the Kiowa Housing Authority ("KHA") have expired. have expired.	63 Okla. Stat. § 1058 Oaths of Office for the plaintiffs

5. Counterclaim:

Grounds for Recovery	Applicable Statute, Ordinance, Common Law Rule
a. Lack of Subject Matter Jurisdiction	*Oneida County, NY v. Oneida Indian Nation of New York,* 470 U.S. 226, 105 S. Ct. 1245, 84 L.Ed.2d 169 (1985); *Seminole Tribe of Fla. v. Fla.*, 517 U.S. _, 116 S.Ct. 1114, 134 L.Ed.2d 252 (1996); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 93 S.Ct. 1267, 36 L.Ed.2d 114 (1973); *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. __, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998).

* * *

Appendix 22

EXCERPTS FROM
TRANSCRIPT OF PROCEEDINGS
MARCH 10, 1999
IN THE DISTRICT COURT OF CADDO COUNTY
STATE OF OKLAHOMA
THE HONORABLE RICHARD G. VAN DYCK
DISTRICT JUDGE
PRESIDING IN
HOUSING AUTHORITY OF THE KIOWA TRIBE
OF OKLAHOMA, ET AL.
v.
RANDALL WORK, ET AL.
NO. CJ-98-118

* * *

THE COURT: Okay. Do you want to give an opening, Ms. Brown?

MS. BROWN: Your Honor, I have a pre-motion to address, a jurisdictional issue.

THE COURT: Uh-huh. Go ahead.

MS. BROWN: We would submit to the Court that this Court does not have jurisdiction over this case, Your Honor. This is a housing -- a tribal -- a Housing Authority for a Tribe. State courts don't have jurisdiction over the tribes. No one has consented to this suit.

And if we look at the strict reading of Section 1057 of the Housing Authority Act, I think we will find that although this is a state statute, and it did allow for its creation, that this statute itself vests the Tribe with complete control over this Housing Authority.

It was created with respect to the Tribe, it functions in the operating area of the Tribe. It in effect could not transact any business or exercize any powers. This statute would have been meaningless unless the Tribal Council had declared a need for the Housing Authority. And it also continues further to vest all powers of appointment within the Tribal officials.

A majority of the homes within this Housing Authority will be located on allotments, which are not within the jurisdiction of this Court. It's not subject to any state, city or county taxes. And for this state Court to assert jurisdiction would be an infringement on this Tribe's right to self-government to control this Housing Authority. This falls in line with the Ware case from the Western District of Oklahoma.

And I realize, Your Honor, that there's the Oklahoma Supreme Court case of Craytor out there, and it just -- it's wrongly decided.

* * *

THE COURT: Uh-huh. Did you concede in your argument, Ms. Brown, that the Housing Authority was created under the state statute?

MS. BROWN: Yes, Your Honor. It was created in accordance with that state statute.

THE COURT: Uh-huh.

MS. BROWN: But the rest of that was under the Ware case, which found that even though it was created under state statute, it's not under state control, it's unfettered Tribal control. And I have a copy of that case, Your Honor.

* * *

THE COURT: Okay. Ms. Brown, with this being a 1979 decision of the Supreme Court of Oklahoma, do you know of any case that's overturned this decision?

MS. BROWN: No, I do not, Your Honor.

THE COURT: Okay. Based on the decision of the Supreme Court in the Craytor case and finding that the Ware case does deal with issues that are different than are before the Court today, I will overrule your jurisdictional motion and find this Court does have jurisdiction to hear the matters.

* * *

Appendix 25

EXCERPTS FROM
PETITIONERS' BRIEF-IN-CHIEF
HOUSING AUTHORITY OF THE KIOWA TRIBE
OF OKLAHOMA, ET AL v. WARE, ET AL.
NO. 93,295
IN THE SUPREME COURT OF OKLAHOMA

* * *

PROPOSITION II

OKLAHOMA COURTS HAVE NO JURISDICTION OVER A DISPUTE INVOLVING THE INTERNAL POLITICAL AFFAIRS OF A TRIBAL HOUSING AUTHORITY AND ITS RELATED FEDERALLY RECOGNIZED INDIAN TRIBE

A. STATE COURTS HAVE NO POWER OVER TRIBES AND TRIBAL GOVERNMENT

* * *

B. TRIBAL IMMUNITY FROM SUIT CANNOT BE AVOIDED BY SUING TRIBAL OFFICIALS

* * *

Appendix 26

IN THE COURT OF INDIAN OFFENSES FOR
THE KIOWA TRIBE
ANADARKO, OKLAHOMA

HOUSING AUTHORITY OF THE KIOWA TRIBE OF OKLAHOMA, an agency of the State of Oklahoma; ART UNAP, JR., Chairman, DOROTHY PALMER, Vice-Chairman, and SANDRA QUOETONE, Secretary-Treasurer, as Officers and the Board of Commissioners of the Housing Authority of the Kiowa Tribe of Oklahoma,

Petitioners,

vs. Case No. CIV-97-A52

BILLY EVANS HORSE, ALVA D. TSOODLE, HERSCHEL SAHMAUNT, JOYCE WILLIS, GEORGE DAINGKAU, DENNIS KOPEPASSAH, EUGENE GEIONETY, SHARON HORSE, individually and in their official capacities, and JANE AND JOHN DOE,

Defendants.

ORDER

This matter was submitted to the Court for consideration without oral argument. The Court notes that this is both a case of first impression and a complicated fact situation. The complication was created by the historical exigency of trying to quickly establish tribal entities using

state law in Oklahoma to receive federal funds. This is further complicated by the hybridization of the election of board members by the Kiowa Tribal Council to this state entity. Further, recent federal law has provided a legal authorization for the transfer of the entity to receive the federal funding without specific procedures to accomplish such a transfer. Additionally, the Kiowa Business Committee and the Kiowa Indian Council are immune from suit in a state court on this issue. This present fact situation would require the Court of Indian Offenses to:

1. Interpret and determine the legal status of an entity created under state law.

2. Determine the nature and consequence hybridization of the Kiowa Housing Authority.

3. Interpret federal law concerning the requirements and procedures for the transfer of authority from the present housing authority to the tribal entity.

4. Possibly, enter orders mandating or restraining actions of a state entity.

The foregoing requirements are beyond the limited jurisdiction of the Court. The parties are not without a forum in that the federal district court is the appropriate forum to determine these disparate issues.

The fact that the Kiowa Housing Authority has initiated this matter as plaintiffs and the defendants have not raised

sovereign immunity does not alter the fundamental jurisdictional issues.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that this matter is dismissed for lack of jurisdiction over the parties and subject matter.

IT IS SO ORDERED !

/S/

PHIL LUJAN, Magistrate